

*Just a sample—not an "answer key." ☺*

**Case Citation:** *Trivino v. Jamesway Corp.*, 148 A.D.2d 851 (3d Dep't 1989).

**Procedural History:** Plaintiff, mother of a child, sued defendant department store in Supreme Court, Sullivan County for negligence relating to cosmetic puffs purchased at store. Defendant impleaded manufacturer of puffs, who impleaded manufacturer of rayon used in puffs (third- and fourth-party complaints). Defendant moved for summary judgment dismissal of plaintiff's complaint. Supreme Court granted in part. Plaintiff and defendant cross-appealed.

**Statement of Facts:** Plaintiff mother purchased cosmetic puffs from defendant's store and glued them to child's pajamas for Halloween costume. Child, wearing costume, leaned over stove and caught fire, and was injured.

**Issues:** (a) Whether plaintiff's use of cosmetic puffs (gluing to child's pajamas) was misuse? (b) If so, whether this misuse was reasonably foreseeable, such that defendant store had a duty to warn plaintiff of dangers from such misuse?

**Holding:** (a) Yes, gluing cosmetic puffs to child's pajamas was misuse. (b) The court could not decide as a matter of law whether misuse was reasonably foreseeable. Reasonable minds could differ on this question, therefore a jury should decide it.

**Reasoning:** Sellers have a duty to warn purchasers of dangers associated with reasonably foreseeable misuse of products. Here, gluing cosmetic puffs to child's pajamas was misuse because it was "outside the scope of the apparent purpose for which the puffs were manufactured[.]" *Trivino v. Jamesway Corp.*, 148 A.D.2d 851, 852 (3d Dep't 1989). Whether such misuse was foreseeable could only be decided by a court as a matter of law (so that summary judgment is appropriate) if the facts are undisputed and only one possible conclusion can be drawn. Under these facts, reasonable minds could differ on whether plaintiff's misuse of puffs was reasonably foreseeable. Therefore summary judgment is not appropriate, and case should be decided by a jury. Defendant's additional argument that it had no duty to warn plaintiff because flammability of cotton is obvious also fails. Court of Appeals previously rejected same argument in *Heller v. Encore of Hicksville*, 53 N.Y.2d 716 (1981). Further, puffs were actually made of rayon, which has different characteristics from cotton.

**Disposition:** Supreme Court's partial grant of summary judgment to defendant reversed. Plaintiff's complaint against department store, as well as third- and fourth-party complaints, all reinstated.